

CONSPIRACY CHARGE AGAINST NERLICH AND WIFE REDUCED

Now Charged With Conspiring to Commit Indictable Offence.

MAXIMUM TERM IS SEVEN YEARS

The Charge of High Treason Against Nerlich Will Be Proceeded With Later.

Chief Justice Sir William Mulock in the Criminal Assizes to-day decided that "conspiring to trade and give information to the enemy," did not come under the list of treasonable offences; and the conspiracy charge against Mr. Emil Nerlich and his wife, Hedwig, was reduced to that of "conspiring to commit an indictable offence." This ruling does not affect the charge of treason against Mr. Nerlich, and upon which he will be tried as soon as the conspiracy charge is finished. The charge now faced by the accused is punishable by imprisonment of from one day to seven years.

Standing side by side in the prisoners' dock at 11 o'clock, the Nerlichs heard read out the indictment charging them with conspiracy to assist Arthur Zirzow, alleged ex-officer of the German army, to leave the country, conspiracy to give information to the enemy, and conspiracy to trade with the said enemy.

Mrs. Nerlich stood motionless, and answered the arraignment with a clear-cut "No." Her husband stood swaying slightly backwards and forwards. He, too, denied his guilt.

The courtroom had soon become crowded with jurors and the curious and interested. Counsels' table was crowded. Beside E. E. A. DuVernet, K.C., Crown prosecutor, sat Inspector of Detectives Kennedy. Prisoners were represented by I. F. Hellmuth, K.C., and G. F. Shepley, K.C., with G. W. Mason as solicitor. Clerks formed a considerable retinue.

Preparations for the trial began early.

Dragoons With Bayonets Attend.

Since the Criminal Assizes have been in session, the City Hall has witnessed the entrance of many corporal's guards, but one this morning was of more than usual interest. Sharp at ten o'clock, two troopers of the R.C.D., with bayonets fixed, accompanied by a sergeant with drawn sword, marched Arthur Zirzow, the principal witness in the trial, into the main corridor. At a word of command the soldiers brought their rifles to the floor. During the pause a crowd gathered, and Zirzow appeared nervous and quite conscious of the attention he was attracting.

After several minutes' wait, the officer returned and at the command, "Shoulder arms!" the group, tramped off. Zirzow was kept in custody.

The Chief Justice opened the case by putting to counsel the question: Is conspiracy, as charged against the Nerlichs, treason?

Mr. Hellmuth answered in a flash that there was nothing in the conspiracy indictment to convey to his mind anything of the sort. He answered his Lordship's question with an emphatic "No."

What Constitutes Treason?

Mr. DuVernet thought differently, but the court pointed out that, according to his interpretation of the code, conspiracy to assist an alien enemy out of the country was not treason; nor were the other acts, at least insofar as they were set forth in the indictment.

"It is for the Crown to say," declared his Lordship, "whether the case is to be tried under 'treason' or under some other section of the code."

Mr. DuVernet then referred for precedent to certain older cases.

He declared that the accused would be given all the privileges to



MR. AND MRS. NERLICH.

Curious Letter to Mrs. Nerlich

Translation Read in Court Proceedings in Treason Case.

The following translation of a letter in German, addressed to Mrs. Nerlich, was read in court during to-day's proceedings:

"Thursday, Nov. 27, 1914.

"Dear Hedi: I received your letter of October 20 on Monday morning. He has been a long time on the way. The letter from Victor I sent direct to Limberg. You are well, so far, but your situation must be unpleasant. I can imagine it a little, for here also the Hollanders are anti-German. I am in the same situation if war should continue. They will wonder what Germany can do. Just think, Hedi, since Sunday I am under suspicion of espionage in Elten. You know I handle letters for Emil's business from Berlin to Toronto. Last Sunday came an enquiry from the Post-Office from Emmenrich as to whom a certain Mrs. Uta from E. was. It was understood that this had to do with a spy because the post had intercepted two letters sent by Nerlich & Co., the contents of which were very suspicious. The man that discovered this heroic deed must have been as mad as a March rabbit.

"What all can't happen to a man. In eight days I was not in Elten anymore because I might finally be taken by the neck and that would be absolutely unsuitable for me; for I have this week made two little pigs into sausages. It is impossible for me to leave them behind. I think that these unpleasant affairs will be shortly cleared up with good will.

"Have you received the letters and papers from Holland? Tell me is it true that the Canadians have sent 2,000,000 soldiers. I read it in the Holland newspapers and if one believed those reports there would not be a single German left in all Germany. Many Holland newspapers are backed up with English money; therefore, they must lie.

What do your youngsters do? They play war and naturally none of them will be French or English, because they are always getting licked. Will Emil come to Germany in the spring or will it come up? Write me soon. It always gives us pleasure to hear from you. Louis sends greetings and declares she saw you once in Nieu-kesh.

"Hearty greetings to you and Emil. From your "NETTA."

CONSPIRACY CHARGE AGAINST NERLICH

(Continued from Page One.)

which they were entitled. He said that it would be hard to prove a treason charge without the conspiracy allegation.

The Chief Justice read from the section under which the accused were charged, and which made conspiracy to kill or wage war against the King, treason; but did not say that conspiracy to assist the enemy was treason. He held that it was necessary to determine this point before the trial began.

"I do not want to rule until all arguments are exhausted," he continued.

Mr. DuVernet stated that he did not wish to oppose his Lordship.

"The case will proceed and I will allow the trial to proceed under section 573," declared the court, "that the accused are charged with conspiracy to commit an indictable offence."

The Nerlichs sat in the room for over half an hour before the opening of court, both, apparently, having suffered from the mental strain of awaiting their trial. Both looked depressed and stolid. Mr. Nerlich's eyes had a far-away, brooding look, and there were dark rings gathering about them. Mrs. Nerlich was fashionably attired in dark blue. A heavy veil she wore into court was raised when order was called. She, too, appeared to be engrossed in her thoughts, and there was a slight flush upon her otherwise pale face. Only once or twice the accused couple addressed each other.

When they walked into the court, they involuntarily went into the custody of Sheriff Mowat, and their bail automatically ceased.

Mr. E. E. A. DuVernet, K.C., Crown Prosecutor, in reply to a question, declared that he was going to try first the conspiracy charge, against Emil Nerlich. Mr. I. F. Hellmuth immediately objected and cited a judicial decision to support his contention that the treason case should be first heard.

"I will not interfere in the program of the Crown," was his Lordship's judgment.

Prisoners Sat Outside Dock.

The Crown offered no objection when Mr. Hellmuth asked that the prisoners be allowed to sit outside the dock. Chairs for the Nerlichs were provided at counsel's table.

Then came the Crown's address to the jury. "You see," said Mr. DuVernet, "that the accused are now placed upon their trial on a less serious offence, so far as the consequences are concerned." He dwelt at some length with the war now in progress. "In this case the accused are German. We are at war with Germany—one of the most serious things, I suppose that could happen. We had strong ties with Germany. There were and are many Germans in this country. They are of three kinds. Some have grown so to love this country that they have gone forth to fight for it against their Fatherland. We read German names among the 'killed in action.' We have Germans whose hearts are in both places, and men have suicided, drawn by both sides until the strain became too terrible. Such people remain strictly neutral. They are peo-

ple who have a love for their Fatherland and a love for this country; they take no part in the struggle. But there is a third class, no doubt mostly of German birth, who have a great love for this Fatherland of theirs, and they think of it only. The accused, if any crime was committed, have not done it for money. They've done it because they've loved their Fatherland with an overwhelming love which leads to hate. Everything is sacrificed.

"Englishmen did not think it possible for their next dearest friends to be signalling aeroplanes. But it's a fight for existence, according to the Germans; it's a fight for the existence of one race or the other, they say.

Must Protect Ourselves.

"We bear no hatred or spite to our alien enemies. All we want is to protect ourselves; all we ask is that the law be not broken. German men and women have lived and won their livelihood here, and made money. The least they can do is to be true to us, and not turn against us. It may be hard, but it should be done. Take the case of a man who has become influential and wealthy, who has built up a large commercial concern here by years and years of labor. What a position he is in—what a strong position he is in! It would be almost impossible to detect him if he were working against the Canadians!

"Let us be fair. We have got to make the people understand that it is a crime to do these things. It is a crime to send men from here to fight against the men we send, for every man counts.

"One man's letter of thanks is here—a man who for his great bravery has already been decorated by the Iron Cross.

"If the accused man here had gone back like his brother, just before the war broke out with England and fought for his Fatherland, we would have had no reason to complain. There is no blame attached to a soldier for shooting a soldier. That is the soldier's bounden duty."

Mr. DuVernet continuing said there was no use sending men to the front unless they were supported from home.

"I want you to see the product of Prussian militarism," said Mr. DuVernet, referring to Zirzow, "and notice his demeanor. Notice the contempt he has for us. This man sees the accused and he will tell you it is the duty of every German of fighting age to return home. Take the military honor of a German officer. Death makes no difference to him. Death is nothing. His bounden duty is to get back to Germany first. This man had military maps, not of Canada, but of France and Belgium, on him, and military papers. This man got an order to go to the United States. He was stopped and admitted he was going back to the war. This lady defendant gave him \$10. She was more enthusiastic than the man. Naturally they are. Mr. Nerlich sent \$10 to him through a waiter."

Mr. Nerlich Much Surprised.

When Zirzow received the order enabling him to leave the country, Mr. Nerlich was very much surprised and would not believe it.

He then took up the question of the letters said to have been sent to and received from Germany by the accused. Mrs. Nerlich, declared the Crown prosecutor, sent 88 letters to Germany. Those were addressed to a lady living near the Dutch border. The person to whom they were addressed would come across the border to get them. This woman in re-

ply would send her letters addressed to Charles Vanderkrouw at New York. From here the replies would be sent to Toronto.

"These letters are quite interesting," said Mr. DuVernet. "Some of them were found in a bureau in Mrs. Nerlich's room."

Mr. Hellmuth objected, and the Crown prosecutor declared that some had been answered and that others were private.

Some of the letters, he said, were found to contain inquiries for information that would be of vital importance to the Germans.

The reply sent by Mrs. Nerlich, said Mr. DuVernet, was considered of such importance that it was printed in a German newspaper.

Mr. DuVernet declared that it was wrong for comforts to be sent to the German soldiers.

There was a certain phrase in one of the letters that called for attention. The correspondent thanked Mrs. Nerlich for the Canadian guides she sent. They had been sent to the German Foreign Office. The agent for the Nerlich Company in Berlin, said the Crown Prosecutor, had sent Mrs. Nerlich seditious literature. This literature blamed England for the war, and was no doubt meant for distribution in the United States. Mr. DuVernet said he could not blame Mrs. Nerlich for this occurrence.

"The defence would mention the fact," he continued, "that Nerlich had walked into the police office and said 'here I am.'"

"Every letter and document since the war began, is gone," he said. "This sets off the other side."

Mrs. Nerlich, he said, was as "brave as a lioness defending its young." The woman had a contempt for the people sitting on the fence. She was not slow to express her love of the Fatherland.

Says Goods Were Sent.

"Evidence will show you that in the early morning hours she sent out goods to German soldiers at the front. Mr. DuVernet said that Mrs. Nerlich thought herself unnoticed, but some of the neighbors were asleep with 'one eye open.'"

He believed that Mrs. Nerlich's efforts in this direction consisted in sending comforts to the soldiers.

The Crown Counsel concluded his address by citing more alleged treasonable letters in which Mrs. Nerlich was both thanked and praised and warned to use every care and precaution. He prophesied that the trial would be speedy and ventured to believe that it was a relief to know that, under his Lordship's direction, the present charges had been reduced to one punishable not by death, but by imprisonment for a term not exceeding seven years.

After the address was concluded Mr. Hellmuth rose with the statement that as Mr. DuVernet had, in his address, made statements which could not possibly be substantiated by any evidence that might be submitted, it was now impossible for the accused to obtain a fair trial. His Lordship made note of the objection.

Detective Maurer Called.

Detective Maurer, the Crown's first witness, said that he came from that part of Switzerland where German is spoken. He found many letters, antedating the war, in the Nerlich place of business, but nothing bearing upon the case, except a slip of paper giving the name and rank of Arthur Zirzwo.

Mr. Hellmuth objected. "I submit that no letter is admissible until the conspiracy is proved"

Mr. DuVernet refused to argue the point involved. Maurer, in answer to the court, stated that the paper in question had been found in Mr. Emil Nerlich's private desk in the Nerlich office.

The Chief Justice: "Why should I not permit that to be read?"

Mr. Hellmuth said that, as the alleged fact of the conspiracy had not been shown, the reading of the paper might prove improper.

The Chief Justice: "Well, I'll admit it as evidence. It may be read. It is usual to prove the conspiracy first. Sometimes, however, the conspiracy can only be proved by giving some of the evidence. I am not aware of the nature of the case; therefore, I cannot give a direction as to how it shall proceed."

The paper was then put in as an exhibit. It reads: "Zirzow, Arthur Lainz, age 23, officer, friend of Mr. Von Huenten, was with Harold."

A vest-pocket notebook, found in a search of the room of the prisoner, was then produced, and the detectives read a note it had contained, as follows: "Hans Baunsche's account will be paid in Berlin. Have sent check to Marl Hoere."

Detective Caurer then told of examining the Nerlich home, where he had arrested Mrs. Nerlich on February 8. Mrs. Nerlich, he said, had offered to read them to him, but he had told her that he knew and could read German.

Mr. Hellmuth again protested: "Letters to Mrs. Nerlich from friends, relations, or strangers are not admissible in any way until conspiracy is proved, and the Crown is not entitled to put this in as evidence of conspiracy until the conspiracy is proved."

The court: "If a person is caught with a compromising letter in his possession, he cannot complain if he is called upon to explain it."

Correspondence Admitted.

Mr. DuVernet explained that he considered the sender of the letter to be a sort of "go-between" with the Nerlichs and Germany. Detective then read aloud a translation of the missive as printed elsewhere.